IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.487of 1999

Reserved on 28.11.2006

Date of decision 14 -12-2006

State of H.P. Appellant

Versus

Jaswinder Singh & others Respondents

Coram:

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant : Mr.Ashutosh Burathoki,
Addl. Advocate General.

For the respondents: Mr.Ajay Sharma, Advocate.

V.K.Ahuja, J.

This is an appeal filed by the appellant-State against the judgment of the court of learned Judicial Magistrate Ist Class-1, Dharamshala dated 16.2.1999 vide which the accused were acquitted of the charges framed under Sections 147,148,149 and 323 of the IPC.

Briefly stated the facts of the case are that on receipt of information that a quarrel had taken place at Pathankot Mandi Road, the police official went to the spot and learnt that all the persons have been taken to Government hospital for treatment. He went there and recorded the statement of Anil Kumar complainant that he is a student of B.A. and on 22.8.1995 at about 4 p.m., he was sitting in front of the shop of one Udham Singh there the accused persons named by him came there along with hockey sticks and without any provocation they started giving beatings to him with hockeys. PWs Manjeet Singh, Anant Kumar and Rakesh Kumar three persons were there who rescued him. Manjeet Singh also suffered injuries. On this report a case was registered and challan

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

was filed before the trail court who tried the respondents as detailed above, resulting in their acquittal.

I have heard Mr.Ashutosh Burathoki, learned Additional Advocate General for the appellant and Mr.Ajay Kumar,learned counsel for the respondents and have gone through the record.

The submissions made by the learned Additional Advocate General were that the statement of the complainant had been duly corroborated by three other witnesses, namely, PW-5 Manjeet Singh, PW-6 Rakesh Kumar and PW-11 Anant Kumar and therefore the learned trial court had come to a wrong conclusion that the guilt of the accused persons were not established and those findings were liable to be reversed.

On the other hand, learned counsel for the respondents has submitted that the impugned judgment does not call for any interference for the reasons stated therein.

Coming to the evidence led by the prosecution, Anil Kumar, complainant was examined as PW-4. In the complaint the name of six persons were alleged as accused, but in the statement he had named only five persons and did not name respondent Mukhtiar as an accused. He reiterated in his statement that he was rescued by PWs Manjeet Singh Anant Kumar and Rakesh Kumar. He stated about the injuries suffered by him on his head as well as on his back. In cross-examination he had admitted that he had taken liquor on that day. He also admitted that the accused persons had field a cross case against him, which is pending in this very court. He also admitted that one of the injured in that case is undergoing treatment in Snowdon Shimla. He also admitted that the accused persons had gone to the Police Station prior to them before they lodged the report. He denied that they gave beatings to the accused persons with hockeys.

PW-5 Manjeet Singh one of the eye witnesses who allegedly rescued the complainant has stated that he was sitting in his shop and 3-4 customers Anant, Anil and some I.T.I. students came there and the

accused persons came on scooters with hockeys to his shop and asked them that Anil Kumar should be asked to come out of the shop and Anil Kumar also begged them to be excused, but they started giving beatings to him with hockeys. He stated that he was given beatings by one Kirat Singh with hockey and all the villagers gathered there. He did not name the accused persons and simply stated that the accused persons came there and did not name the number of the accused who gave beatings. He also admitted that he is facing a cross case for this occurrence. He stated that he is not aware of the scooter numbers on which the accused came. He stated that many persons were having the hockey sticks except Kirat Singh. He denied that he was under the influence of liquor. He admitted that the accused persons had lodged a report with the police prior to them.

PW-6 Rakesh Kumar is the other eye witness. He named only two persons who came there, namely, Kirat Singh and Jaswinder Singh along with hockeys and they quarreled with Anant Kumar and Anil Kumar who were sitting in the shop of Manjeet Singh. They started quarrelling and he prevented them and in the meanwhile Dhian Chand, Udham Singh and Hazara Singh came there and started quarrelling. He stated that Kirat Singh and Udham Singh gave blows over the head of Anil with hockey and blood oozed out. He stated that he also suffered injuries at that time but did not state that with whose stick he suffered injuries. He admitted in cross-examination that when the quarrel took place on that day he was present in his house at a distance of 100 yards. He admitted that he is an accused in the cross case and also admitted that the witnesses, namely, Anant Ram, Anil Kumar, Harish and Joginder are all the accused in that case. He denied his knowledge in case Anil Kumar was under the influence of liquor on that day. PW-11 Anant Kumar the third eye witness has stated that the accused persons came with hockey sticks and asked that Anil Kumar should come out of the shop and some persons gave blows over the head of Anil Kumar and many persons gathered there and he also came out. He did not name the accused persons but only

identified them in general and while he was rescuing Anil Kumar he also suffered injuries. He admitted that he is also an accused in the cross case. He denied that he was under the influence of liquor at that time but a perusal of MLC Ex.PW3/C shows that he was smelling of alcohol though he was not intoxicated. He denied that they gave beatings to the accused persons or they lodged FIR prior to them. The statements of other witnesses are not material and have been discussed by the learned trial court also.

On a perusal of the evidence led by the prosecution it is clear that a free fight had taken place at the spot in which the complainant and some other persons had suffered injuries for which a cross case was registered against the complainant and other witnesses. According to law both these cases should be decided by the same court and as far as possible at the same time, but the learned trial court had decided one of the cases and the other case is still pending and has not been decided on the day of the judgment. This approach cannot be said to be proper since both the cases are required to be disposed of together and by the same court. The fact that the accused persons also suffered injuries and a cross case was registered against the complainant and other witnesses cannot be ignored and the evidence of the prosecution witnesses was not such which could be said to be such upon which conviction could be based. The learned trial court had discussed the evidence and the conclusion arrived at cannot be said to be perverse so as to call for any interference by this court and as such the appeal filled by the appellant is dismissed and the findings of the learned trial court are affirmed. Bail bonds shall stand discharged forthwith.

December 14,2006(g) **(V.K.Ahuja),J.**